



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor

Ted Stewart
Executive Director

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Division Director

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April 5, 1995

CERTIFIED RETURN RECEIPT
P 074 976 190

Wendell Owen
Co-Op Mining Company
P.O. Box 1245
Huntington, Utah 84528

Re: Reassessment for State Violation No. N94-46-4-1B, Co-Op Mining Company,
Bear Canyon Mine, ACT/015/025, Folder #5, Emery County, Utah

Dear Mr. Owen:

The undersigned has been appointed by the Board of Oil, Gas and Mining as the Assessment Officer for assessing penalties under R645-401.

Enclosed is the proposed civil penalty reassessment for the above-referenced violation. The violation was issued by Division Inspector, Peter Hess on December 12, 1994. Rule R645-401-600 et. seq. has been utilized to formulate the proposed penalty. By these rules, any written information which was submitted by you or your agent, within fifteen (15) days of receipt of the Notice of Violation, has been considered in determining the facts surrounding the violation and the amount of penalty.

Under R645-401-700, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within 30 days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.
2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within 30 days of receipt

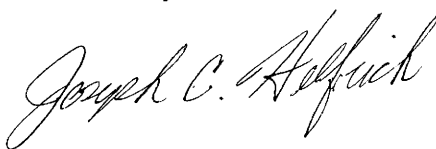


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of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph 1, the Assessment Conference will be scheduled immediately following that review.

If a timely request for review is not made, the fact of violation will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the proposed assessment. Please remit payment to the Division, mail c/o Vicki Bailey.

Sincerely,

A handwritten signature in cursive script, reading "Joseph C. Helfrich".

Joseph C. Helfrich
Assessment Officer

blb
Enclosure
cc: Donna Griffin, OSM

**WORKSHEET FOR ASSESSMENT OF PENALTIES
UTAH DIVISION OF OIL, GAS AND MINING**

COMPANY/MINE Co-Op Mining/Bear Canyon Mine

NOV #N94-46-4-1B

PERMIT # ACT/015/025

VIOLATION 1 **OF** 1

ASSESSMENT DATE 3/14/95

ASSESSMENT OFFICER Joseph C. Helfrich

I. HISTORY MAX 25 PTS

- A. Are there previous violations which are not pending or vacated, which fall within 1 year of today's date?

ASSESSMENT DATE 3/14/95

EFFECTIVE ONE YEAR TO DATE 3/14/94

PREVIOUS VIOLATIONS

EFFECTIVE DATE

POINTS

0

—

0

1 point for each past violation, up to one year;
5 points for each past violation in a CO, up to one year;
No pending notices shall be counted.

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (either A or B)

NOTE: For assignment of points in Parts II and III, the following applies. Based on the facts supplied by the inspector, the Assessment Officer will determine within which category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an Event (A) or Hindrance (B) violation? A

A. Event Violations Max 45 PTS

1. What is the event which the violated standard was designed to prevent?
Public safety Environmental harm

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent? Yes

.... PROBABILITY	RANGE
.... None	0
.... Unlikely	1-9
.... Likely	10-19
.... Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS

The inspector identified major surface openings to underground mine working, which in turn would be a public safety concern.

3. What is the extent of actual or potential damage?

RANGE 0 - 25*

*In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 12

PROVIDE AN EXPLANATION OF POINTS

Although the area is remote access by the public is feasible with a potential for injury or a loss of life

B. Hindrance Violations MAX 25 PTS

1. Is this a potential or actual hindrance to enforcement?

RANGE 0 - 25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS 0

PROVIDE AN EXPLANATION OF POINTS

TOTAL SERIOUSNESS POINTS (A or B) 32

III. NEGLIGENCE MAX 30 PTS

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? **IF SO - NO NEGLIGENCE;**
 OR Was this a failure of a permittee to prevent the occurrence of a violation due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation due to the same? **IF SO - NEGLIGENCE;**
 OR Was this violation the result of reckless, knowing, or intentional conduct? **IF SO - GREATER DEGREE OF FAULT THAN NEGLIGENCE.**

.... No Negligence	0
.... Negligence	1-15
.... Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Ordinary.

ASSIGN NEGLIGENCE POINTS 10

PROVIDE AN EXPLANATION OF POINTS

The void in the drainage, which is the subject of this violation, was marked off by t posts and barbed wire. However it was not maintained and the other voids were not fenced off. It has additionally been represented that this violation was also the subject of a previous notice of violation issued in 1985. See attached.

IV. GOOD FAITH MAX 20 PTS. (EITHER A or B) (Does not apply to violations requiring no abatement measures.)

- A. Did the operator have onsite the resources necessary to achieve compliance of the violated standard within the permit area?

.... **IF SO - EASY ABATEMENT**

Easy Abatement Situation

- | | |
|------------------------------------------------------------------------------------------|--------------------|
| Immediate Compliance | -11 to -20* |
| Immediately following the issuance of the NOV) | |
| Rapid Compliance | -1 to -10* |
| (Permittee used diligence to abate the violation) | |
| Normal Compliance | 0 |
| (Operator complied within the abatement period required) | |
| (Operator complied with conditions and/or terms of approved Mining and Reclamation Plan) | |

* Assign in upper or lower half of range depending on abatement occurring in 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance OR does the situation require the submission of plans prior to physical activity to achieve compliance?

.... **IF SO - DIFFICULT ABATEMENT**

Difficult Abatement Situation

.... **Rapid Compliance** -11 to -20*

.... (Permittee used diligence to abate the violation)

.... **Normal Compliance** -1 to -10*

.... (Operator complied within the abatement period required)

.... **Extended Compliance** 0

(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard, or the plan submitted for abatement was incomplete)

(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? _____ **ASSIGN GOOD FAITH POINTS** -0

PROVIDE AN EXPLANATION OF POINTS

This is to be evaluated upon termination of the notice of violation which is to occur on or about May 15, 1995.

V. **ASSESSMENT SUMMARY FOR** _____

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>32</u>
III.	TOTAL NEGLIGENCE POINTS	<u>10</u>
IV.	TOTAL GOOD FAITH POINTS	<u>-0</u>
	TOTAL ASSESSED POINTS	<u>42</u>
	TOTAL ASSESSED FINE	<u>\$ 680.00</u>

blb



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March 27, 1995

TO: James W. Carter, Director

FROM: Peter Hess, Engineer *PH*

RE: Subsidence-New Evidence for Consideration, Re-evaluation of Assessment, NOV N94-46-4-1, Bear Canyon, Co-Op Mining Company, ACT/015/025, Emery County, Utah

As we briefly discussed on March 24, 1995, Mr. Charles Reynolds, Environmental Coordinator, Co-Op Mining Company, has submitted additional evidence which needs to be considered for the finalized assessment of the aforementioned violation, should your determination uphold same.

Plate 3-4, (dated April 15, 1987) which is a map of the underground workings of the Bear Canyon Mine, shows that ventilation stoppings were installed out by the initial subsidence hole, which is the hole that was barricaded off in the drainage; this is shown as a cave in the 1st South retreat section. MSHA does not consider stoppings to have the same ventilation effectiveness as mine seals; however, considering the fact that the permittee did barricade off the hole, (which is all 30 CFR, Part 75.1711 requires) and did block entrance to the gob area of the underground works. I believe that the amount of negligence points in the assessment should be reduced. The majority of underground management personnel are not aware of the requirements of SMCR.

No action was taken to prevent drainage access into the underground works, (R645-301-513.600). Also, it appears that MSHA personnel did not require the permittee to fill in the hole because they felt the barricade was adequate to prevent any problems. It is not known when the other two holes subsided; it is possible that the permittee had no knowledge of them until N94-46-4-1B was issued.



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J. Carter
Bear Canyon
March 27, 1995

It is my opinion, that although the permittee should have taken it upon himself to fill in the hole, (to go above and beyond the call of duty, so to speak) they did not because no one required them to do so. This is not their fault.

I would like to recommend that, should you uphold the violation, the amount of negligence points be reduced to 10.

Should you have any questions, please call me.

sd
cc: J. Helfrich